

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

Vernon Roberts,

et. al.,

Plaintiff,

v.

Barbara Ann Roberts,

et. al.

Defendants.

RECEIVED

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2007 SEP 26 *A 10: 15

COURT P. HACKETT CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA.

Case Number:

* 207mc3373-MHT

MOTION TO QUASH

Comes now Alabama Department of Public Safety and Agent Brent Thomas by and through their attorney and in response to the attached subpoena, moves the Court pursuant to Rule 45(c) FRCP to quash the subpoena requested by Defendant Robert John Schiess, III and as grounds for this motion states as follows:

That Barbara Ann Roberts and Robert John Schiess, III have been indicted for Capital Murder and are the defendants in criminal case number CC-06-0461 and CC-06-0462 in State Court in Cherokee County, Alabama.

That the Plaintiff filed civil suit against Barbara Ann Roberts and Robert John Schiess, III for the Murder of his wife Defendant in the Northern District of Georgia, Rome Division, under Case Number 4:07 CV 025-HLM.

That the Defendant Robert John Schiess, III by and through his attorney of record file a Subpoena to take the Deposition of Agent Thomas in Montgomery, Alabama and for the production of records, photos, notes summaries, test results etc., as to Martha Darlene Roberts, deceased.

That Defendant, Robert John Schiess, III filed the same subpoena both in the Northern District of Georgia and in compliance with Rule 45-2(B) and(C) of the Federal Rules of Civil Procedure in the Middle District of Alabama.

That Rule 45-2(B) and(C) of the Federal Rules of Civil Procedure set out that this honorable court must issue the subpoena and therefore is the

proper court to hear this motion to Quash the Subpoena.

That Barbara Ann Roberts, one of the Defendants in this civil case, is pro se.

That Section 12-21-3.1, Code of Alabama 1975, as amended, protects Agent Thomas from being deposed and producing reports and other documents maintained by himself or the Alabama Department of Public Safety in a civil case when there is an on going criminal investigation or case. The statute is set out below:

12-21-3.1 Subpoena of law enforcement officers and investigative reports; disposition of criminal matters.

(a) Neither law enforcement investigative reports nor the testimony of a law enforcement officer may be subject to a civil or administrative subpoena except as provided in subsection (c).

(b) Law enforcement investigative reports and related investigative material are not public records. Law enforcement investigative reports, records, field notes, witness statements, and other investigative writings or recordings are privileged communications protected from disclosure.

(c) Under no circumstance may a party to a civil or administrative proceeding discover material which is not authorized discoverable by a defendant in a criminal matter. Noncriminal parties may upon proper motion and order from a court of record: Secure photographs, documents and tangible evidence for examination and copying only by order of a court imposing such conditions and qualifications as may be necessary to protect a chain of custody of evidence; or protect the prosecutors', law enforcement officers', or investigators' work product; or to prevent the loss or destruction of documents, objects, or evidence. Such discovery order may be issued by a court of record upon proof by substantial evidence, that the moving party will suffer undue hardship and that the records, photographs or witnesses are unavailable from other reasonable sources.

(d) Discovery orders prior to the disposition of the criminal matter under investigation are not favored and should be granted only upon showing that the party seeking discovery has substantial need of the materials and is unable, without undue hardship, to obtain the substantial equivalent by other means.

(e) Nothing in this section shall preclude the disclosure of investigative reports, including the testimony of law enforcement officers, to a state administrative agency authorized by law to investigate or conduct administrative contested case hearings in any matter related to the suspension, revocation, or

restriction of a professional license or registration for the protection of the public health and safety.

(f) For purposes of this section, a criminal matter is disposed of in any of the following ways:

(1) When the prosecuting authority has presented the matter to a grand jury and a no bill or true bill has been returned.

(2) After a written statement by the chief law enforcement officer of the agency conducting the investigation that the matter under investigation is closed.

(3) When the entity or individual under investigation has been tried and final judgment entered.

Therefore the witnesses ask the Court conduct a hearing and enter an order quashing the attached subpoena.

Respectfully submitted the 26th day of September, 2007.

ORAL ARGUMENT REQUESTED



S/J. Haran Lowe, Jr.

J. Haran Lowe, Jr.

ASB-1215-076J

haran.lowe@dps.alabama.gov

Attorney for Department of
Public Safety
Legal Unit
P.O. Box 1511
Montgomery, Alabama 36102
(334) 242-4392
(334) 242-0894 FAX

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Barbara Ann Roberts
Cherokee County Jail
110 Cedar Bluff Rd
Centre, AL 35960-0000

C. Gregory Price, Esq.
P.O. Box 69
Rome, GA 30162

J Anderson Davis, Esq.
P.O. Box 5007
Rome, GA 30162

Michael O'Dell, Esq.
300 Grand Ave. S, Ste. 505
Ft. Payne, AL 35967-0000

Clerk, U.S. District Court
600 East First Street
Rome, Georgia 30161
ATTN: Joann


S/ J. HARAN LOWE, JR.
J. Haran Lowe, Jr.

09/24/2007 12:46 7062369044

SMITH, PRICE, & WRIGHT

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~~Attala, MS, 12/10/03 Subpoena in a Civil Case~~

Issued by the
UNITED STATES DISTRICT COURT

MIDDLE**DISTRICT OF****ALABAMA**

Vernon Roberts et. al.

v.

Barbara Ann Roberts, et. al.

SUBPOENA IN A CIVIL CASECase Number:¹ N.D. Ga. 4:07CV-025-HLM

TO: Brent Thomas, Agent ABI
301 South Ripley St., Montgomery, Al
36104

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME:

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
Reagan Reporters, 4137 Carmichael Rd., Ste 320 Montgomery, Al 36106	09-26-07 @ 1:00pm CST

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

All documents, records, photos, notes, summaries, test results, etc., as to Martha Darlene Roberts, deceased and which in any way relate to the case of the State of Alabama v. Barbara Roberts and Robert John Schless, III.

PLACE	DATE AND TIME
Same as above	09-26-07 @ 1:00 pm CST

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. (Federal Rules of Civil Procedure, Rule 17).

ISSUING OFFICER'S SIGNATURE AND TITLE (IF APPLICABLE) OR PLAINFIGHT DEFENDANT'S NAME, ADDRESS AND PHONE NUMBER	DATE
C. Gregory Price, P.C. Atty for Defendant Robert John Schless, III P.O. Box 69, Rome, GA 30162-0069 706-236-9935	09-05-07

¹See Rule 45, Federal Rules of Civil Procedure. Subscriptions (b), (c), and (d), on page 4811 pages*Action is pending in district other than district of issuance - move district under case number

DUPLICATE

Court Name: U S DISTRICT COURT - AL/M
Division: 2
Receipt Number: 4602000541
Cashier ID: kburkhar
Transaction Date: 09/26/2007
Payer Name: J HARAN LOWE JR ATTY

MISCELLANEOUS FEES

For: ALA DEPT OF PUBLIC SAFETY
Case/Party: D-ALM-2-07-MC-003373-001
Amount: \$39.00

CHECK

Check/Money Order Num: 10013
Amt Tendered: \$39.00

Total Due: \$39.00
Total Tendered: \$39.00
Change Amt: \$0.00